IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.850 OF 1991.

M/s. Allana Cold Storage Pvt. Ltd.,
a Company registered under the
Companies Act, 1956 and having its
registered office at Allana House,
4 Allana, Colaba, Bombay ..Petitioner

versus

The Thane Municipal Corporation
a Staturoty Municipal Corporation,
through its Commissioner,
having its office at
Thane Municipal Corporation Building,
Panchpakhadi, Thane.
..Respondent.

Shri D.K.Ghaisas for the Petitioner

Shri R.S.Apte for the Respondent

Coram : R.M.S.Khandeparkar
S.R.Sathe, JJ.

Dated : 20th April, 2006

ORAL JUDGMENT (PER R.M.S.Khandeparkar, J.)

1. Heard.

2. The Petitioner challenges the resolution dated March 30, 1990 of the Respondent Corporation, which was in relation to increase in the rates of octroi duty, on the ground that the same is in contravention of the provisions of Rule 5(1)(aa) of

the Maharashtra Municipality (Octroi) Rules, 1968, hereinafter called as "the said rules".

3. It is the case of the Petitioner that the Respondent Corporation by a resolution dated March 30, 1990 sought to increase the rates of Octroi duty, to be effective from 1.4.1990, when, in fact, in accordance with the provisions of law comprised under Rule 5(1)(aa) of the said rules, the Corporation could not have demanded the increased rate of the octroi duty prior to the expiry of 37 days from the date of passing of the said resolution. The Corporation having sought to recover Octroi duty at an enhanced rate w.e.f. April 1, 1990 on the basis of the resolution in that regard passed on March 30, 1990, only two days prior to the date of the enforcement of the said resolution, the same is in contravention of the said provisions of law, and therefore, the collection of octroi duty at the enhanced rate from April 1, 1990 is bad in law and therefore the amount so collected should be directed to be refunded to the Petitioner.

4. On the other hand, it is the case of the Respondent Corporation that considering the

provisions of law comprised under the rule in question, though the implementation of the resolution dated March 30, 1990 could not have been done prior to the expiry of 37 days from the date of the said resolution, the collection of the octroi subsequent to the said period of 37 days from the date of the passing of the resolution should not be held to be bad in law. It can, at the most, result in collection of the octroi duty at the increased rate to be bad for a period of 37 days from the date of passing of the resolution and not thereafter. It is also the contention on behalf of the respondent that it is not the case of the Petitioner that the Petitioner has not passed on the burden of payment of increased rate of octroi duty to his customers. Besides, the increased rate of octroi duty is within the permissible limits under the statutory provisions in that regard.

5. Taking into consideration the provisions of law comprised under the said rules and the rival contentions in that behalf, the first point which arises for consideration is that whether the collection of the Octroi duty at the increased rate w.e.f. April 1, 1990 onwards till the enforcement

of the new rules of the Corporation in the year 1999 would be bad in law. Rule 5 of the said rules deals with the procedure prior to imposition of octroi duty, and sub rule (1)(aa) thereof provides that every Council shall, by resolution passed at a special meeting convened within sixty days from the date of the coming into force of these rules or such further period or periods as the State Government may in any case allow, fix the date (which shall not be earlier than thirty-seven days and not later than fifty-two days from the date of passing of the resolution) from which Octroi shall be levied. Obviously, clause "(aa)" of Rule 5(1) merely deals with the date which is to be fixed for collection of octroi duty decided to be levied by the Corporation. Undoubtedly, it provides that such date shall not be prior to the expiry of 37 days from the date of resolution fixing the date for enforcement of the increased rate of the Octroi duty. It is merely relating to fixation of the date for collection of the Octroi duty. It does not relate to the right of the Corporation or the obligation of the dealers to pay such octroi duty or in relation to substantive rights of the parties in that regard. It merely deals with the fixation of the date for collection

of increased rate of octroi duty. Being so, merely because the resolution was sought to be enforced on the very next day of passing thereof, though the collection of the octroi duty at increased rate during the period of 37 days from the date of resolution could not be said to be in consonnance with provisions of law comprised under Rule 5, the collection of such octroi duty at the increased rate after expiry of the period of 37 days of the resolution can not be found fault with, nor it can be said to be in contravention of Rules 5(1)(aa) of the said rules. Being so, the Collection of the octroi duty at increased rate after the expiry of 37 days from the date of the resolution dated March 30, 1990 cannot be said to be bad in law. This is more so in view of the undisputed fact that the increase in the rate had been within the permissible limits. It is not the case of the Petitioner that the rate to which the octroi duty has been increased was beyond the permissible limit. Being so, the legality about the increase in the rate of octroi duty being not in dispute, as the dispute being merely related to the date of enforcement thereof, and the Corporation having already taken the resolution for implementing the increased rate of

octroi duty, it can be safely held that the resolution dated March 30, 1990 in that regard would be effective on expiry of 37 days from the date of passing of the said resolution and therefore collection of the octroi duty at the increased rate on expiry of such period would be perfectly valid and lawful.

6. The Respondent is also justified in contending that it is not the case of the Petitioner that the Petitioner has suffered any prejudice on account of collection of the octroi duty at increased rate as it is not the case of the Petitioner that the Petitioner has not passed on its liability in relation to the increased rate of octroi duty to its customers. Being so, there being no prejudice caused to the Petitioner,, the grievance of the petitioner for the period after the expiry of initial period of 37 days from the date of the resolution is to be held as without any substance.

7. At the time of admission of the Writ Petition by the order dated March 15, 1991, the Petitioner was allowed to pay half of the amount of

the octroi duty which was being levied and to furnish bank guarantee in relation to the balance amount till the disposal of the petition. It is informed across the bar that accordingly from that day the petitioner had been paying half of the amount of octroi duty and in relation to the balance amount bank guarantee was being furnished.

8. In the facts and circumstances of the case, therefore, the petition will have to be partly allowed to the extent to the period of 37 days from April 1, 1990 directing the Respondent-Corporation to refund the Octroi duty collected at the increased rate for the said period to the Petitioner after adjusting the due amount already paid by the petitioner. As regards the period after the expiry of 37 days from March 24th, 1990, the Petitioner shall be liable to pay octroi duty in terms of the resolution dated March 23, 1983 and to that extent whatever is the liability of the Petitioner, the same is to be cleared by the Petitioner. The Respondent shall be entitled to encash bank guarantee in case the petitioner fails to pay the said amount within a period of three months from today.

9. Rule is made absolute in above terms with no order as to costs.

(S.R.Sathe, J.) **(R.M.S.Khandeparkar,J.)**